

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

CITY STATIONERY, INC.

and

CASE 24-CA-9070

UNION DE TRONQUISTAS DE
PUERTO RICO, LOCAL 901, IBT,
AFL-CIO

Miguel Nieves-Mojica, Esq.,
for the Government.¹

Ilsa Y. Figueroa-Arus, Esq.,
for the Company.²

SUPPLEMENTAL DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. On September 30, 2003, the National Labor Relations Board (Board), in a Decision and Order in *City Stationery, Inc.*, 340 NLRB No. 70, affirmed the trial judge's decision of June 17, 2002, that directed the Company to provide make-whole relief to 14 individuals who the Company unlawfully discharged on October 19 and 22, 2001. On June 28, 2004, the Company entered into a Compliance Stipulation, thereby waiving its right under Section 10(e) and (f) of the National Labor Relations Act, as amended (Act), to contest either the propriety of the Board's Order, or the findings of fact and conclusions of law underlying said Order, and providing for a compliance hearing to resolve any disputes concerning the amount of backpay due under the terms of the Order.

As a controversy exists over the amount of backpay due the 14 named individuals, the Regional Director for Region 24 of the Board issued a Compliance Specification and Notice of Hearing on July 30, 2004, which stated the Company owed backpay and other monetary relief totaling \$148,151.46, plus interest, to 14 individuals.

The compliance trial was held in San Juan, Puerto Rico, on October 25, 2004. On the entire record,³ including my observation of the demeanor of the witnesses, and after

¹ I shall refer to Counsel for General Counsel as the Government.

² I shall refer to the Respondent as the Company.

³ I take judicial notice of the findings of fact and conclusions of law set forth in the underlying unfair labor practice case.

considering the briefs filed by Government and Company counsel, I make the following findings of fact and conclusions of law:

I. Findings of Fact

The Company is dedicated to the purchase and sale of office supplies to governmental and industrial entities. The Company is (or at least was until a fire on June 23, 2003) headquartered in Caguas, Puerto Rico, but also has facilities in Carolina and Hato Rey, Puerto Rico. On Friday, October 19, 2001, 17 warehouse employees attempted to discuss possible wage increases with Company President Pedro Rodriguez. President Rodriguez ordered them to get back to work or to leave the Company's property. When the employees left and congregated at the facility's gate, Rodriguez discharged them. Their discharges were found to violate the Act. Two additional warehouse employees who were absent from work on Friday, October 19, 2001, returned to work on Monday, October 22, 2001; however, they joined the demonstrators at the facility's gate and were discharged along with yet one additional warehouse employee. These three discharges were also found to be in violation of the Act. A number of the discharged employees waived reinstatement and were paid backpay pursuant to settlement agreements with the Company. The remaining 14 were reinstated, on or about July 31, 2002, with only the matter of backpay to be determined for them.

The 14 for whom backpay is owed are: Pedro Arzuaga, Luis R. Maysonet, Miguel Melendez, Gerardo Rivera, Ricardo Caez, Eric Rodriguez, Norberto Hernandez, Mario Matos, Carlos Oyola, Jose M. Rivera, Carlos J. Rodriguez, Misael Rodriguez, Luis Muler, and Eddiel Cruz.

In compliance proceedings, the Board attempts to place the discriminatees, as nearly as possible, in the same financial position they would have been in but for the illegal discrimination against them. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941). A backpay award may involve some ambiguity and estimation and as such is only an approximation necessitated by the employer's wrong doing. *Cobb Mechanical Contractors*, 333 NLRB 1168 (2001). It is a well-settled policy of the Board that a backpay formula which approximates what the discriminatees would have earned is acceptable if it is not unreasonable or arbitrary in the circumstances of the case. Any uncertainty in the evidence is to be resolved against the Company as the wrongdoer. The Government bears the burden of establishing the amount of gross backpay due. The Company bears the burden of establishing any reductions in backpay such as interim earnings or any willful loss of interim earnings. *Florida Tile Co.*, 310 NLRB 609 (1993).

The Company in its answer to the compliance specification denied the amount of backpay due for each discriminatee as well as the overtime pay rates for certain of the discriminatees. However, by a "Joint Motion and Stipulation of Facts" entered into by the Government and Company on October 21, 2004, and amended on October 25, 2004,⁴ the parties agreed there is no dispute regarding the appropriateness and correctness of the calculations of net backpay, without interest, for 11 of the 14 discriminatees. The names of

⁴ The Joint Motion and Stipulation of Facts was received in evidence as Government Exhibit 2.

the 11 discriminatees for which there is no dispute as to the net amount, without interest, the Company acknowledges owing them is, with the specific amount for each, as follows:

| | |
|---------------------|--------------------------|
| Pedro Arzuaga | \$8,241.75 |
| Luis R. Maysonet | \$6,204.24 |
| Ricardo Caez | \$9,969.73 |
| Eric Rodriguez | \$7,161.85 |
| Norberto Hernandez | \$4,759.82 |
| Mario Matos | \$1,980.70 |
| Jose M. Rivera | \$8,675.32 |
| Carlos J. Rodriguez | \$5,134.21 |
| Misael Rodriguez | \$5,183.93 |
| Luis Muler | \$10,800.00 |
| Eddiel Cruz | \$15,851.00 ⁵ |

The parties, by their Joint Motion and Stipulation of Facts along with certain acknowledgments at trial, agreed that the net backpay, without interest, for the three remaining discriminatees would be as follows:

| | |
|-----------------|-------------|
| Miguel Melendez | \$11,022.15 |
| Gerardo Rivera | \$9,805.62 |
| Carlos Oyola | \$11,481.48 |

However, the Company, in agreeing to the above net amounts for Melendez, G. Rivera, and Oyola reserved the right to call, and did call, them as witnesses at trial for the stated purpose of ascertaining if they had any interim earnings. The Company acknowledged that if no interim earnings were established by their testimony the amounts set forth above would be the net backpay, without interest, owed the three discriminatees.

Each of the three denied any interim earnings. Melendez testified he was “completely unemployed” between October 19, 2001 and July 31, 2002.⁶ Melendez acknowledged working for a related company of Coca-Cola Cayey, Puerto Rico, but only after the applicable backpay period herein. G. Rivera testified he “did not work” during the applicable backpay period. G. Rivera acknowledged working for unreported cash but only after the backpay period had ended. Oyola testified he requested and received unemployment benefits during the backpay period but did not have work or any earnings during the backpay period.

No evidence was presented to dispute the three discriminatees’ testimony. I credit their undisputed testimony. I note the Company did not subpoena any records from the three discriminatees. The Company failed in any manner to establish any interim earnings for the three. Accordingly, I find Melendez, G. Rivera and Oyola are due the amounts set forth above.

⁵ See Government Exhibit 3

⁶ This is the stipulated backpay period for these three discriminatees.

I. Conclusions of Law

I find the backpay calculations set forth above are admittedly appropriate and correct. The Company has not sustained its burden of showing that there should be any additional offsets for any of the 14 named discriminatees.

On these findings of fact and conclusions of law, and on the entire record, I issue the following:

ORDER⁷

The Company, City Stationery, Inc., its officers, agents, successors and assigns shall make whole the discriminatees by payment to them of the amounts set forth below, plus interest, calculated in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The names of the discriminatees and the specific amounts to be paid plus interest, are as follows:

| | |
|---------------------|-------------|
| Pedro Arzuaga | \$8,241.75 |
| Luis R. Maysonet | \$6,204.24 |
| Ricardo Caez | \$9,969.73 |
| Eric Rodriguez | \$7,161.85 |
| Norberto Hernandez | \$4,759.82 |
| Mario Matos | \$1,980.70 |
| Jose M. Rivera | \$8,675.32 |
| Carlos J. Rodriguez | \$5,134.21 |
| Misael Rodriguez | \$5,183.93 |
| Luis Muler | \$10,800.00 |
| Eddiel Cruz | \$15,851.00 |
| Miguel Melendez | \$11,022.15 |
| Gerardo Rivera | \$9,805.62 |
| Carlos Oyola | \$11,481.48 |

Dated, Washington, D.C.

William N. Cates
Associate Chief Judge

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If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.